

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROGELIO ANDRADE,

Plaintiff,

— against —

A TO Z HARDWARE, INC and ABDO ALSAIDA,

Defendants.

22-CV-7304 (ARR) (CLP)

NOT FOR ELECTRONIC OR
PRINT PUBLICATION

OPINION & ORDER

ROSS, United States District Judge:

This Court has received the Report and Recommendation on the instant case dated August 17, 2024, from the Honorable Cheryl L. Pollak, United States Magistrate Judge. *See* R. & R., ECF No. 23. No objections have been filed. The Court reviews “de novo any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b); *see also* *Brissett v. Manhattan & Bronx Surface Transit Operating Auth.*, No. 09-CV-874 (CBA)(LB), 2011 WL 1930682, at *1 (E.D.N.Y. May 19, 2011), *aff’d*, 472 F. App’x 73 (2d Cir. 2012) (summary order). Where no timely objections have been filed, “the district court need only satisfy itself that there is no clear error on the face of the record.” *Finley v. Trans Union, Experian, Equifax*, No. 17-CV-0371 (LDH)(LB), 2017 WL 4838764, at *1 (E.D.N.Y. Oct. 24, 2017) (quoting *Est. of Ellington ex rel. Ellington v. Harbrew Imps. Ltd.*, 812 F. Supp. 2d 186, 189 (E.D.N.Y. 2011)). Having reviewed the record, I find no clear error. I therefore adopt the Report and Recommendation, in its entirety, as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1).

Accordingly, plaintiff is granted leave to file an amended complaint re-alleging his FLSA overtime claim, along with any available state law claims. Plaintiff is reminded that, pursuant to my order dated February 20, 2024, ECF No. 17, adopting Judge Pollak’s first Report and

Recommendation, ECF No. 15, he may not renew his FLSA minimum wage claims in the absence of allegations that he was paid below the federal minimum wage at any point during the relevant statutory period. He also may not replead his NYLL minimum wage claims for the period of December 1, 2016, to December 30, 2017.

The existing certificate of default against defendants, ECF No. 10, is vacated. Plaintiff's pending motion for default judgment, ECF No. 18, is denied as moot, without prejudice. Plaintiff may renew his motion for default judgment if, after the amended complaint has been served on defendants, they again fail to appear or respond and a new certificate of default is entered.

SO ORDERED.

/s/
Allyne R. Ross
United States District Judge

Dated: September 3, 2024
Brooklyn, New York